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Law Department, Patent Services
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JUN 20 2005

OFFICE OF PETITIONS

In re Application of :
Rohrbach et al. :
Application No. 10/765,649 : DECISION ON
Filed: January 26, 2004 : PETITION
Atty Docket No. HO1-0010 :

This is a decision on the "PETITION UNDER 37 C.F.R. § 1.183 TO SUSPEND OR WAIVE THE REQUIREMENTS OF 37 C.F.R. § 1.181(f)," filed May 5, 2003, in the above-identified application.

To the extent that the instant petition requests withdrawal of the holding of abandonment in application No. 09/566,034, the petition is **dismissed as inappropriate.**

A request for withdrawal of the holding of abandonment (or revival of application No. 09/566,034) is by way of petition directed to application No. 09/566,034. Petitioner cannot file a paper in application No. 10/765,649 requesting relief in the instant case and in the parent case. A separate paper must be filed in the parent application, requesting whatever relief is sought in the parent application. See 37 C.F.R. § 1.4.

To the extent that the instant petition requests withdrawal of the PTO's holding that at the time of the filing the instant application lacked copendency with Application No. 09/566,034, the petition under § 1.183 is **DISMISSED.**

Applicants are given **TWO (2) MONTHS** from the mail date of this decision to respond to this decision. This period is not extendable. See § 1.181(f).

Petitioner objects to the Examiner's conclusion set forth in the Office action of December 7, 2004 (page 2, 1st paragraph) that the instant application may not claim priority as a continuation on parent application No. 09/566,034 because the applications lack copendency. Specifically, the parent application became abandoned December 1, 2003 for failure to file an appeal brief; however, the instant application was not filed until January 26, 2004. Petitioner contends that copendency was maintained by virtue of the filing of an extension of time on January 26, 2004.

A review of the record, in light of petitioner's argument, confirms that the applications do lack copendency.

MPEP 201.06(c):

If an extension of time is necessary to establish continuity between the prior application and the continuing application filed under 37 CFR 1.53(b), the petition for an extension of time must be filed as a separate paper directed to the prior nonprovisional application. Under 37 CFR 1.136(a)(3), an authorization to charge all required fees, fees under 37 CFR 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time for its timely submission. A continuing application filed under 37 CFR 1.53(b) is a new application which is assigned a new application number and filing date and is ** maintained separately from the file of the prior application. The filing of a continuing application is not a paper directed or placed in the file of the prior application and is not a "reply" to the last Office action in the prior application. Thus, a petition for an extension of time and the fee set forth in 37 CFR 1.17 are required to be filed as a separate paper in the prior application. Any petition for an extension of time directed to the prior application must be accompanied by its own certificate of mailing under 37 CFR 1.8 (if mailed by first class mail) or under 37 CFR 1.10 (if mailed by Express Mail), if the benefits of those rules are desired.

A cover letter requesting an extension of time was filed in this application. However, the record supports a conclusion that no extension of time was filed as a separate paper in prior application No. 09/566,034. It is undisputed that after the filing on September 30, 2003 of a notice of appeal in the parent application, no appeal brief was filed. Under the circumstances, the applications lack copendency.

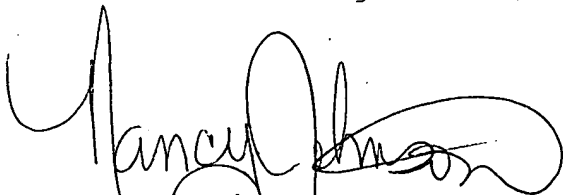
Further correspondence with respect to this decision should be addressed as follows:

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Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a large, stylized loop at the end.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions